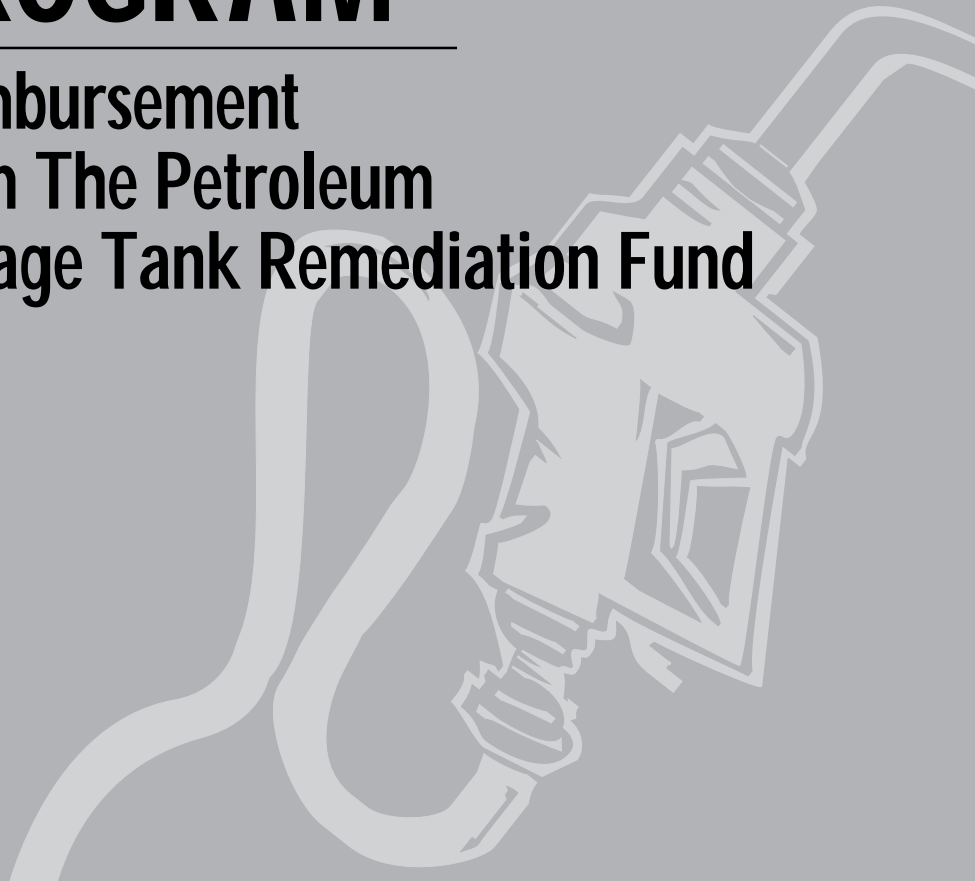


TEXAS NATURAL RESOURCE  
CONSERVATION COMMISSION

# PETROLEUM STORAGE TANK PROGRAM

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Reimbursement  
From The Petroleum  
Storage Tank Remediation Fund





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## Reimbursement From The Petroleum Storage Tank Remediation Fund

The Petroleum Storage Tank (PST) Division is responsible for the management of the Petroleum Storage Tank Remediation (PSTR) Fund for the Texas Natural Resource Conservation Commission (TNRCC). Within the PST Division, the PSTR Fund reimbursement program is managed by the Division's Reimbursement Section.

The PST Division's principal responsibilities involve the development and administration of the state regulatory program for underground and aboveground storage tanks containing petroleum products and other hazardous substances. The TNRCC's regulatory program is designed to maintain and protect the quality of groundwater and surface water resources in the state from contamination resulting from leaking storage tanks.

## Program History

In 1984, the United States Congress amended the Resource Conservation and Recovery Act (RCRA) by adding Subtitle I. This mandated the development and implementation of a comprehensive regulatory program for underground storage tanks (USTs) containing regulated substances and releases of these substances into the environment.

In 1985, the Governor of Texas authorized the Texas Water Commission to administer the initial state UST program, which consisted of UST registration.

In 1987, the 70th Texas Legislature passed Senate Bill 779 (effective date of September 1, 1987) which authorized the Texas Water Commission to develop and administer a comprehensive statewide UST program.

In 1989, the 71st Texas Legislature established House Bill 1588 in response to the growing concerns for the public health, environmental, and financial impacts resulting from leaking underground and aboveground petroleum storage tanks. In response to these concerns, House Bill 1588 created the Petroleum Storage Tank Remediation (PSTR) Fund. With the additional programmatic responsibilities, the Petroleum Storage Tank Division was established by the Texas Water Commission on

September 1, 1989 to administer federal and state legislation regarding the regulation of underground and aboveground storage tanks.

Pursuant to this legislation, rules were promulgated (Title 30, Texas Administrative Code (TAC), Chapter 334, Subchapter H, §§334.301-334.322) with the intent to financially assist storage tank owners or operators in their response to a release of a petroleum product.

Subsequently, the 72nd (House Bill 1214) and 73rd (Senate Bill 1243) Texas Legislatures have expanded the Petroleum Storage Tank Remediation (PSTR) fund. These changes have been incorporated into the reimbursement rules 30 TAC, Chapter 334, Subchapter H, §§334.301-334.322. The programs' statutory authority can be located in the Texas Water Code, Chapter 26, Subchapter I, Underground and Aboveground Storage Tanks, §§26.341-26.358.

In 1995, the 74th Texas Legislature passed House Bill 2587, which made many changes to the Reimbursement Program. The major changes are as follows:

- (1) fund eligibility based on tank registration;
- (2) new deductibles based on meeting corrective action milestones;
- (3) new deductible for occurrences after receiving a closure letter;
- (4) releases discovered and reported after December 22, 1998 are no longer eligible for the fund;
- (5) fund eligibility requirements for registered professional engineers;
- (6) all activities performed after September 1, 1993 must be approved in writing; and
- (7) sunset of the Petroleum Storage Tank Remediation Fund on September 1, 2001.

These changes have been incorporated into the reimbursement rules 30 TAC, Chapter 334, Subchapter H, §§334.301-334.322.

## Fund Coverage

The fund covers the expenses of corrective action taken in response to a release of:

- (1) petroleum products from a petroleum storage tank;
- (2) hydraulic fluid from a hydraulic lift system located at a vehicle service and fueling facility; and
- (3) spent oil from spent oil tanks located at a vehicle service and fueling facility provided that the tank listed under this subsection is also subject to regulation under Subchapter D (see 30 TAC, Chapter 334, subchapter D, §§334.71-334.85 relating to Release Reporting and Corrective Action).

Storage tank owners or operators who are eligible (see 30 TAC, Chapter 334, §334.310 regarding Requirements for Eligibility) to access the Petroleum Storage Tank Remediation Fund will have coverage for those necessary allowable and reimbursable

cleanup costs that exceed their owner/operator contribution (deductible) up to a maximum of \$1 million per occurrence (much like a \$1 million insurance policy).

## Eligibility

In order for an owner or operator to be eligible to access the PSTR Fund through the reimbursement program they must meet the following criteria:

- (1) own or operate a regulated petroleum storage tank system.
- (2) the tanks they own or operate must be registered with the TNRCC by December 31, 1995, unless the tank was unknown and discovered later.
- (3) new tanks installed on or after December 1, 1995 must be registered with the TNRCC no later than 30 days after the installation of the new tank is complete.
- (4) all annual tank fees since September 1, 1987 must be paid.
- (5) releases must be reported to the TNRCC prior to December 22, 1998, and subsequently confirmed.
- (6) effective September 1, 1993 all corrective action activities and costs must be approved in writing by the TNRCC. If activities have not been preapproved, they will not be processed or paid until all claims with preapproved activities have been processed and paid.
- (7) remediation equipment design must be sealed and construction must be supervised by a licensed or registered professional engineer.

Not all leaking underground or aboveground storage tank corrective action projects are eligible for reimbursement. To be eligible, the tank must contain a petroleum product which is defined as:

“obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.”

Corrective action for spent oil tanks and hydraulic lift systems are reimbursable if the release meets eligibility requirements similar to those for gasoline or diesel storage tanks. The spent oil tanks and hydraulic lift systems must have been used in conjunction and contemporaneously with a vehicle service and fueling facility.

## Owner / Operator Contribution “Deductible”

The required deductible will be based on how many single petroleum storage tanks, not tank systems, that the applicant owns or operates in Texas at the time the TNRCC determines that the application is administratively

complete. The deductible is applied on a per occurrence basis. The number of tanks may fluctuate from time to time, depending on the applicant's business operations. The deductible, or "owner or operator contribution," will be as follows:

- \$1,000 for a person who owns or operates 12 tanks or less.
- \$2,500 for a person who owns or operates 13 to 99 tanks.
- \$5,000 for a person who owns or operates 100 to 999 tanks.
- \$10,000 for a person who owns or operates 1,000 or more tanks.

To remain in the deductible group listed above, the applicant must:

- (1) have a site assessment report submitted prior to December 23, 1996. Failure to submit the report before the deadline will result in the doubling of the deductibles.
- (2) have a corrective action plan submitted and approved prior to December 23, 1997. Failure to meet the deadline will result in a doubling of the previously doubled deductible.
- (3) meet the goals outlined in the approved corrective action plan by December 23, 1998; otherwise, the cumulative deductible will again be doubled.

Meeting the first two deadlines, but missing the last deadline will result in the requirement for the highest deductible. If you miss the first deadline, but meet the second and third deadline, your deductible will still be doubled. In addition, if a site has received a closure letter, and has a subsequent release on or after September 1, 1995, the deductible will be \$50,000.

The application is considered to be administratively complete once all of the technical and financial information required for the review is received by the TNRCC. The number of tanks owned or operated will be verified with the PST Registration Section.

## Allowable Costs

**A**llowable costs are those costs and expenses which arise directly from the performance of necessary corrective action in accordance with the requirements of the TNRCC. Only those costs which are allowable as defined in the reimbursement rules can be reimbursed from the PSTR Fund (see 30 TAC, Chapter 334, Subchapter H, §334.308 relating to Allowable Costs and Restrictions on Allowable Costs).

## Non-Allowable Costs

**N**on-allowable costs are those specific costs which cannot, by rule, be reimbursed from the PSTR Fund (see 30 TAC, Chapter 334, Subchapter H, §334.308 relating to Allowable Costs and Restrictions on Allowable Costs).

## Reasonable and Reimbursable Costs

As outlined in the reimbursement rules, the TNRCC will utilize the Reimbursable Cost Guidelines to evaluate the costs of activities and equipment used on or after June 7, 1993 in the assessment and corrective action of leaking petroleum storage tank sites. (see 30 TAC, Chapter 334, Subchapter H, §334.309 regarding Reimbursable Costs; and Subchapter M, §334.560 regarding Reimbursable Cost Guidelines for the Petroleum Storage Tank Reimbursement Program).

## Who Reviews the Applications

The group within the TNRCC who conducts the reviews of the reimbursement applications is the Reimbursement Section (Petroleum Storage Tank Division). They perform the administrative screening, the technical, and financial reviews of all claims filed for reimbursement.

## Reimbursement Application Review Process

Upon receipt of an application for reimbursement of corrective action costs, the TNRCC will perform the following activities:

- 1. Perform an administrative screening, to determine:**
  - (a) if the applicant is eligible for reimbursement as outlined by the rules;
  - (b) if the application has been completed correctly;
  - (c) if all of the necessary forms and documentation have been submitted;
  - (d) if the technical information concerning activities performed (i.e. assessments and corrective action) has been submitted;
  - (e) if the applicant's documentation regarding the number of tanks owned/operated, site registration and registration fees is correct; and,
  - (f) if the activities performed on or after September 1, 1993 were preapproved.
- 2. Conduct the technical review, to determine:**
  - (a) if the activities performed were necessary for site cleanup;
  - (b) if cleanup activities were properly performed;
  - (c) if all expenses submitted for reimbursement are allowable;
  - (d) if the activities performed on or after September 1, 1993 were preapproved; and
  - (e) if the preapproval documentation is complete and accurate.
- 3. Conduct the financial review, to determine:**
  - (a) if the deductible is met;

- (b) if all costs submitted are for activities performed on or after September 1, 1987;
- (c) if all required invoices and subcontractor invoices are submitted;
- (d) if acceptable proof of payment is submitted;
- (e) if capital equipment costs are itemized;
- (f) if costs have been submitted on a previous claim;
- (g) if the costs for corrective actions performed on or after June 7, 1993 are reimbursable based on reimbursable cost guidelines; and,
- (h) if the costs submitted for activities performed on or after **September 1, 1993** were preapproved, and are within the preapproved amounts.

**4. Verify through inspections conducted by TNRCC Regional Field Office personnel that the activities to be reimbursed have actually been performed.**

**5. Prior to payment, verify that all tank registration fees are paid.**

## Fund Payment Report

Upon completion of the review of an application, the TNRCC will prepare a Fund Payment Report. The Fund Payment Report provides the applicant with information on the total amount of the application, any amount disallowed, any amount withheld pending the submittal of information, the total amount of any previous payments, the required deductible amount, and the amount payable on that particular application. The Fund Payment Report will include a brief explanation of why any costs have been withheld or disallowed. The applicant has an opportunity to protest the findings contained within the fund payment report by filing a written protest within forty-five days of receipt of the report. The applicant may also request an informal meeting to discuss the protested items. If the applicant continues to disagree after the informal meeting, the applicant may request a formal hearing before a hearings examiner.

## Who Reviews the Requests for Preapprovals

The primary reviewers of preapproval requests are the case coordinators in the Responsible Party Remediation Section (Petroleum Storage Tank Division) and the regional inspectors (Field Operations Division).

## Applications for Reimbursement

A blank application for reimbursement form can be obtained from the Reimbursement Section, Petroleum Storage Tank Division by calling 512/239-2001. When submitting a claim, the TNRCC requires the original and one copy of the completed application for reimbursement. The original application



including all required documentation and any overdue fees and registration information should be submitted to:

*Texas Natural Resource Conservation Commission  
Reimbursement Section, MC 139  
Petroleum Storage Tank Division  
P. O. Box 13087  
Austin, Texas 78711-3087*

Also, the copy of the application for reimbursement with all supporting documentation should be submitted to the TNRCC Regional Field Office, where the site covered by the application is/was located. All applications for reimbursement must be filed using one of the following:

- Certified mail, return receipt requested;
- Express mail or other overnight delivery service, return receipt requested; or,
- Hand delivered to the appropriate offices.

## **TNRCC Petroleum Storage Tank Rules**

The TNRCC Petroleum Storage Tank Rules are contained within Title 30, Texas Administrative Code (TAC), Chapter 334 (Underground and Aboveground Storage Tanks). The following is a listing of all of the current subchapters:

- Subchapter A: (§§334.1-334.12) General Provisions
- Subchapter B: (§§334.21-334.23) Underground Storage Tanks Fees
- Subchapter C: (§§334.41-334.55) Technical Standards
- Subchapter D: (§§334.71-334.85) Release Reporting and Corrective Action
- Subchapter E: (§§334.91-334.109) Financial Responsibility
- Subchapter F: (§§334.121-334.132) Aboveground Storage Tanks
- Subchapter G: [reserved]
- Subchapter H: (§§334.301-334.322) Reimbursement Program
- Subchapter I: (§§334.401-334.428) Underground Storage Tank Contractor Certification and Installer Licensing
- Subchapter J: (§§334.451-334.466) Registration of Corrective Action Specialists and Project Managers for Product Storage Tank Remediation Projects
- Subchapter K: (§§334.481-334.510) Petroleum Substance Waste

- Subchapter L: (§§334.531-334.559) Overpayment Prevention
- Subchapter M: (§334.560) Reimbursable Cost Guidelines for the Petroleum Storage Tank Reimbursement Program

## Obtaining TNRCC Petroleum Storage Tank Rules

The TNRCC does not provide the public with copies of the rules. However, the official version of the rules can be obtained from the Office of the Secretary of State, Texas Register Section at the following address:

*Texas Register  
P.O. Box 13824  
Austin, Texas 78711-3824  
Phone: (512) 463-5561*

## Obtaining Technical Guidance Information

The Petroleum Storage Tank Division has published a number of pamphlets detailing the various aspects of the petroleum storage tank program. The pamphlets are available from the Petroleum Storage Tank Division at 512/239-2200.

## Who to Call Concerning Reimbursement Questions

All reimbursement questions should be directed to the Petroleum Storage Tank Division's **Reimbursement Section** at **(512) 239-2001**.

All preapproval related questions should be directed to the Petroleum Storage Tank Division's **Responsible Party Remediation Section** at **(512) 239-2200**.

Questions regarding tank registration should be directed to the Petroleum Storage Tank Division's **Registration Section** at **(512) 239-2160**.





## Texas Natural Resource Conservation Commission

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